IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mohd. Ali v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1460/1992
under Article 226 of the Constitution of India.

Date of Order : 2nd May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

By this petition for writ the petitioner has challenged initiation of proceedings under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as “the Act of 1956”) against him and also orders passed under the proceedings referred above and consequence thereof.

The facts in brief are that at the instance of Chairman, Municipal Board, Jalore the Tehsildar, Bhinmal registered a case against the petitioner under Section 91 of the Act of 1956. Accordingly a notice was issued by the Tehsildar, Bhinmal to the petitioner for removal of the alleged encroachment made by him

over a land situated at Station Road, Bhinmal bearing khasra No.2381 and 2382. The Tehsildar by order dated 23.1.1965 ordered to remove the petitioner from possession of the land referred above and also for recovery of fine in a tune of Rs.624/-. Being aggrieved by order dated 23.1.1965 the petitioner preferred an appeal before the Collector, Jalore and the same was also rejected by Collector, Jalore vide order dated 30.11.1965. A second appeal was preferred by the petitioner before learned Revenue Appellate Authority, Jodhpur which came to be accepted by judgment dated 8.11.1967. The Revenue Appellate Authority while accepting the second appeal by order dated 8.11.1967 remanded the matter to Tehsildar, Bhinmal for its fresh adjudication after recording evidence of the parties.

The Tehsildar, Bhinmal in pursuance of the order dated 8.11.1967 after recording evidence adduced by the parties decided the matter afresh by the judgment dated 22.9.1971. The Tehsildar again held the petitioner trespasser and ordered for his dispossession from the land in question with fine of Rs.960/-. The first appeal preferred by the petitioner before the Collector, Jalore was also dismissed by judgment dated 3.1.1977 and the second appeal too was dismissed by Revenue Appellate Authority, Ajmer officiating as Revenue Appellate Authority, Jodhpur by judgment dated 8.8.1984. Revision petition preferred

before the Board of Revenue by the petitioner was also dismissed by judgment dated 17.12.1991. All the orders referred above passed under the proceedings for Section 91 of the Act of 1956 and the consequence that to are under challenge in the present writ petition.

The contention of the counsel for the petitioner is that throughout in the proceedings under Section 91 of the Act of 1956 his case was that the land in question was in his possession lawfully as such he could not be treated as trespasser. He also placed on record certain documents to claim title over the land. The petitioner also placed on record a document Anx.1 claiming thereby that the land in question was given to his ancestors by erstwhile State of Jodhpur. The petitioner also contended that the aforesaid document came into his knowledge at subsequent stage and, therefore, he placed the same document on record at subsequent stage. It was also contended by the petitioner, without prejudice to above, that he was having possession over the land as a tenant of the Municipal Board, Jalore. To substantiate the contention he placed on record certain receipts issued by the competent authorities of the Municipal Board, Jalore. The Tehsildar while considering those receipts held that it does not reveal from perusal of those receipts that the same pertains to the land in question. According to the counsel for the petitioner the findings given by the

Tehsildar, Bhinmal and affirmed by the appellate authorities as well as by the revisional authority are perverse as the Tehsildar failed to appreciate that the petitioner was in possession of the land in dispute only, therefore, he could not have receipts for any land other than the land in dispute.

A reply to the writ petition has been filed on behalf of the respondents defending the proceedings initiated under Section 91 of the Act of 1956 and the orders made thereon.

I have heard counsel for the parties and also perused the record.

From perusal of record it is apparent that the petitioner claimed title over the land on basis of the document which is placed on record as Anx.1. In alternative the petitioner also pleaded before the Tehsildar that he deposited requisite rent before the Municipal Board and the receipts thereof were given to him, as such he was a tenant and by no stretch of imagination it could be treated as a trespasser. The courts below failed to appreciate the contention of the petitioner to the effect that as he was claiming title over the land, no proceedings under Section 91 of the Act of 1956 could have been initiated against him pertaining to the land in dispute. It is well settled that the proceedings under Section 91 of the

Act of 1956 are summary proceedings and in these proceedings the complicated question with regard to the title of the property cannot be decided. In view of it the Tehsildar, Bhinmal and all the authorities affirming the order passed by the Tehsildar erred while ordering to remove the petitioner from possession of land in dispute. The initiation of the proceedings under Section 91 of the Act of 1956 itself was not competent as the petitioner claimed title over the land.

Irrespective of the facts and legal position above, it is also pertinent to note that the petitioner also claimed himself as a tenant of the land in dispute. He also placed on record certain receipts. The Tehsildar after considering those receipts held that from perusal of those receipts it does not reveal that the same pertains to the land in dispute. I also found from the record that the Municipal Board, Jalore nowhere disputed the receipts. The dispute with regard to receipts was made by the Tehsildar and not by the Municipal Board. The Tehsildar has not considered the fact that the petitioner was having possession over no other land than the land in dispute, therefore, the receipts must be pertaining to that land only.

In view of whatever discussed above, the orders impugned suffers from an error which is

apparent on the face of record and which requires to be rectified by this Court under Articles 226 and 227 of the Constitution of India.

Accordingly the writ petition is allowed. The orders impugned dated 3.1.1977 passed by Collector, Jalore; dated 8.8.1984 passed by Revenue Appellate Authority, Jodhpur and dated 17.12.1991 passed by Board of Revenue are hereby quashed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.